



ASP-13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Michael Hahs et al. Confirmation No.: 8832  
Appln. No. : 09/737,399 Art Unit : 1743  
Filed : December 15, 2000 Examiner : D.K. Handy  
Title : CASSETTE AND DELIVERY SYSTEM

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**APPEAL BRIEF**

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#### **I. Real Party in Interest**

This application is assigned, via an assignment recorded at reel 011977, frame 0572, to Ethicon, Inc., which is owned by Johnson & Johnson.

#### **II. Related Appeals and Interferences**

There are no related appeals or interferences.

#### **III. Status of the Claims**

Presently claims 1 to 8 are pending in the application. Claims 1, 2 and 4 to 8 stand rejected under 35 U.S.C. §103(a) over the U.S. Patent No. 5,882,611 to Williams et al. and U.S. Patent No. 3,828,922 to Holkestad. Claim 3 stands rejected under 35 U.S.C. §103(a) over Williams et al., Holkestad and U.S. Patent No. 3,933,240 to Humble. Claims 7 and 8 stand rejected under 35 U.S.C. §103(a) over Williams et al., U.S. Patent No. 5,869,341 to Woodaman and U.S. Patent No. 5,976,881 to Klingner.

#### **IV. Status of Amendments**

No amendments have been filed after issuance of the Final Office Action Mailed December 16, 2004.

#### **V. Summary of the Invention**

A cassette assembly for delivering a substance according to the present invention comprises a cassette having at least one cell therein containing a quantity of the substance and a protective sleeve containing the cassette. The cassettes has a first side, a second side opposite the first side and a first end and the sleeve has a first side, a second side opposite the first side and a first end. A first tab at the sleeve first end extends inwardly from the first side toward the second side and abuts the cassette's first side. A second tab at the sleeve first end extends inwardly from the second side toward the first side and abuts the cassette's second side. The cassette has a first lateral dimension between its first side and its second side which is smaller than a second lateral dimension between the sleeve first side and the sleeve second side. (See Specification pg. 2, line 24 to pg. 3, line 6; pg. 6 lines 10 to 21; and FIG. 5)

Preferably, the cassette further comprises a first face between its first side and its second side and the sleeve further comprises a first edge at its first end between its first side and its second side with the sleeve having a retaining member connected to the sleeve by a hinge at the sleeve first edge and abutting the cassette first face, and with the first tab and the second tab extending inwardly from respective first and second lateral edges of the retaining member. (See Specification pg. 3, lines 8 to 13; pg. 6, line 23 to pg. 7, line 19; FIG. 5)

Preferably, the first and second tabs have at least one flap folded inwardly toward the sleeve sides. Preferably, the sleeve is formed of absorbent stock, as for instance cardboard or a coated cardboard, so that a small quantity of the substance on the cassette can be absorbed into the stock. (See. Specification pg. 3, lines 15 to 18; pg. 7, lines 11 to 19; and FIG. 8)

An indicator strip can be provided on the sleeve for indicating the presence of substance thereon. Identifying indicia on the cassette can be provided along with and an aperture through the sleeve in registry with the indicia whereby the indicia can be read through the aperture. (See Specification pg. 3, lines 20 to 24; and FIG. 9)

## **VI. Issues for Appeal**

1. Whether the Examiner has established a prima facie case of obviousness under 35 U.S.C. § 103(a) of claims 1, 2 and 4 to 8 over Williams et al. in view of Holkestad?

2. Whether the Examiner has established a prima facie case of obviousness under 35 U.S.C. § 103(a) of claim 3 over Williams et al. in view of Humble?

3. Whether the Examiner has established a prima facie case of obviousness under 35 U.S.C. § 103(a) of claims 7 and 8 over Williams et al. and Holkestad in view of Woodaman?

## **VII. Grouping of the Claims**

For purposes of this appeal only, for the first rejection (of claims 1, 2 and 4 to 8) claim 2 stands alone and the remaining claims stand and fall together, and for the third rejection (of claims 7 and 8), the claims stand and fall together.

## **VIII. Argument**

Applicants submit that the Examiner has failed to establish a prima facie case of obviousness in rejecting claims 1, 2 and 4 to 8 under 35 U.S.C. § 103(a) over Williams et al. and Holkestad. Holkestad is non-analogous art, there is no suggestion for making the alleged combination and even if made it would not reach the claimed inventions. Holkestad discloses an antitheft packages device. Holkestad is not properly analogous art as it is within an entirely separate field of endeavor (antitheft packages) and fails to solve any problem facing Applicants. The Examiner has failed to provide reasoning as to why Holkestad should be analogous despite the objection to the reference by Applicants and for that reason alone has failed to establish a prima facie case. Applicants submit that such reasoning is lacking from the Office Action as no credible reasoning exists. Holkestad is clearly in a different field of endeavor, anti-theft packaging, from the claimed invention, a sterilizer cassette assembly. To the extent Holkestad solves any problem it would be how to prevent a thief from removing an item from a package by providing a one-way catch which allows insertion of an object into a package and retards removal of the object from the package. Applicants were not concerned with theft.

Regardless, there would be no reason for one of ordinary skill in the art to combine the references. Williams et al. discloses a sterilization cassette inside of a sleeve. The package of Williams et al. needs no anti-theft feature and it already incorporates a feature for preventing the cassette from falling out of the package. Accordingly there would be no reason for one of ordinary skill in the art to make the alleged combination. The Examiner alleges that one of skill in the art would have been motivated to employ tabs 16 and 20 of Holkestad to the package of Williams et al. to guide the insertion of the cassette. Williams et al. describe no difficulty inserting the cassette and the tabs of Holkestad are described for their security use. Accordingly, one of skill in the art, at the time of Applicants' invention, would not have been motivated to add the tabs from Holkestad to the package of Williams et al. Such motivation can be found only in reading Applicants' specification.

Furthermore, even if the alleged combination were made it would fail to reach the claimed invention. The claims define first and second tabs which extend inwardly to abut first and second sides of the cassette when it is received within the sleeve. Tabs 16 and 20 on Holkestad do not abut the sides of an object when it is received within the antitheft packaging device. Rather, they abut the ends of the cassette to prevent the cassette from coming out. If security tabs were added to Williams et al. they would abut the end, not sides, of the cassette and thus fail to reach the claimed invention. The Examiner would have them placed so as to abut the sides of the cassette. Such a placement scheme would only come from a hindsight reconstruction employing Applicants's specification as a guide. It does not come from the references.

Given Holkestad being non-analogous art, the Examiner having failed to establish a motivation to combine the references and the failure of any such purported combination to reach the claimed invention, Applicants respectfully submit that the Examiner has failed to establish a prima facie case of obviousness in rejecting claims 1, 2 and 4 to 8 over Williams et al. and Holkestad.

Claim 2 further defines over Williams et al. and Holkestad. It defines a retaining member and the first and second tabs extend inwardly from lateral edges thereof. The Examiner has failed to establish how to reach this structure from the cited references (where is the retaining member and where are the tabs extending inwardly from its lateral edges) and has therefore failed to establish a prima facie case of obviousness over claim 2.

The Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a) in rejecting claim 3 over Williams et al., Holkestad and Humble. Humble suffers the same fate as Holkestad of not being analogous art. It is in a separate field of endeavor, anti-theft packaging, and fails to solve a problem facing Applicants. Again, the Examiner has failed to establish how Humble would be analogous art. Even if it were analogous art, there is no suggestion for making the alleged combination.

The Examiner has asserted that it would be obvious to import the tabs 46 and 48 from Humble into the package of Williams et al. to prevent unauthorized and inadvertent removal of the cassette. Williams et al. already incorporates a feature to prevent inadvertent removal of the

cassette thereby mooted the alleged motivation for making the combination. If it were made as suggested by the Examiner, to prevent unauthorized and inadvertent removal of the cassette, then it would function as in Humble the tabs abutting the end rather than the sides of the cassette as defined in claim 3. Neither would the tabs extend from lateral edges of a retaining member abutting the first face of the cassette. The alleged combination, even if made, fails to even come close to the claimed invention.

The Examiner has failed to establish that Humble is analogous art, failed to define a sufficient suggestion for making the combination and even if made the alleged combination comes nowhere close to the claimed invention. The Examiner has failed to establish a prima facie case of obviousness in rejecting claim 3 over Williams et al., Holkestad and Humble.

The Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a) in rejecting claims 7 and 8 over Williams et al., Woodaman and Klingner. Both Woodaman et al. and Klingner are non-analogous art. Neither is within the field of endeavor of Applicants, Woodaman being in food packaging and Klingner being protective clothing, and neither solves a problem facing Applicants. Applicants were unconcerned with detecting food spoilage or failure of an outer glove. Moreover, even if the references were combined they would not reach the claimed invention. For instance none of the references teach the limitation of tabs folded inwardly from the side which abut the sides of the cassette. Accordingly, the Examiner has failed to establish a prima facie case of obviousness in rejecting claims 7 and 8 over Williams et al., Woodaman and Klingner.

Applicants submit that in each of the rejections the Examiner failed to establish a prima facie case of obviousness and request withdrawal of the rejections and allowance of the claims.

Respectfully submitted,

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Appendix  
Claims on Appeal

1. A cassette assembly for delivering a substance, the assembly comprising:
  - a cassette having at least one cell therein containing a quantity of the substance, and the cassette further comprising a first side, a second side opposite the first side and a first end between the first side of the cassette and the second side of the cassette;
  - a protective sleeve containing the cassette, the sleeve comprising:
    - a first side, a second side opposite the first side, a first end between the first side of the sleeve and the second side of the sleeve and a second end opposite the first end of the sleeve, the first end of the sleeve being open for receiving the cassette and the second end of the sleeve being closed;
    - a first tab at the first end of the sleeve which extends inwardly from the first side of the sleeve toward the second side of the sleeve and abuts the first side of the cassette;
    - a second tab at the first end of the sleeve which extends inwardly from the second side of the sleeve toward the first side of the sleeve and abuts the second side of the cassette; and
  - wherein the cassette is positioned within the protective sleeve with the first side of the cassette adjacent the first side of the sleeve and the first end of the cassette at the first end of the sleeve and wherein the cassette has a first lateral dimension defined between its first side and its second side which is smaller than a second lateral dimension defined between the first side of the sleeve and the second side of the sleeve.
2. A cassette assembly according to claim 1 wherein:
  - the cassette further comprises a first face between its first side and its second side;
  - the sleeve further comprises a first edge at its first end between its first side and its second side;
  - the sleeve further comprises a retaining member connected to the sleeve by a hinge at the first edge of the sleeve and abutting the first face of the cassette; and
  - wherein the first tab and the second tab extend inwardly from respective first and second lateral edges of the retaining member.



3. A cassette assembly according to claim 2 wherein the first tab further comprises at least one flap folded inwardly toward the first side of the sleeve and the second tab further comprises at least one flap folded inwardly toward the second side of the sleeve.

4. A cassette assembly according to claim 1 wherein the sleeve is formed of absorbent stock, whereby a small quantity of the substance on the cassette can be absorbed into the stock.

5. A cassette assembly according to claim 4 wherein the stock is cardboard.

6. A cassette assembly according to claim 5 wherein the stock is a coated cardboard.

7. A cassette assembly according to claim 1 and further comprising an indicator strip on the sleeve for indicating the presence of substance thereon.

8. A cassette assembly according to claim 7 having identifying indicia on the cassette and an aperture through the sleeve in registry with the identifying indicia whereby the indicia can be read through the aperture.



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(Date)

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(Signature)

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

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Dear Sir:

Attached is an Appeal Brief for the above-captioned patent application.

Please charge Deposit Account No. 10-0750/ASP-13/ACF in the name of Johnson & Johnson in the amount of \$500.00, representing the cost of filing a Brief on Appeal in the above-captioned matter.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/ASP-13/ACF. This Authorization is being submitted in triplicate.

Respectfully submitted,

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